THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.28136 of 1998

Dated:27.06.2007

Between
Coromandel Fertilizers Limited,
Rep., by its Secretary
Mr.S.Kumaraswamy

.....Petitioner

and

1.The Presiding Officer,
Industrial Tribunal-cum-Labour
Court, Visakhapatnam
And others.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.28136 of 1998

ORDER:

This writ petition is filed seeking a Certiorari to call for the records relating to the award passed in I.D. No. 464 of 1995 dated 21.07.1998 on the file of the Industrial Tribunal-cum-Labour Court at Visakhaptnam and to quash the same as arbitrary and illegal.

The petitioner is the Management of Coromandel Fertilizers and 2nd respondent is the workman. It appears that the respondent-workman was issued with a charge sheet dated 27.1.1992 enumerating three charges and further issued with another charge sheet dated 12.2.1992 enumerating five charges. After conducting a detailed enquiry into the

matter, 2nd respondent was dismissed from service by an order dated 1.8.1994. Aggrieved thereby, he filed a review and the same was rejected. Ultimately, he raised a dispute under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act') before the Industrial Tribunal-cum-Labour Court at Visakhapatnam.

Before the Labour Court, it was the case of the 2nd respondent herein that in the domestic enquiry ordered a farce of an enquiry was conducted and he was not given fair and proper opportunity to defend himself. Further, the evidence on record is not sufficient to hold him guilty of the charges. Even assuming that the charges are proved, the punishment of dismissal from service was disproportionate to that of the misconduct alleged. The Management, on the other hand, contended that the allegations made by the respondent-workman are not true and correct and the charges were duly proved.

Before the Labour Court, no oral or documentary evidence was adduced on either side. However, on the basis of the record placed before it, the Labour Court, came to the conclusion, that:

> *"The Management imposed the punishment obviously acting under the impression that all the six charges were found proved. But in the scrutiny made under point No.1 only four charges came to be upheld as proved. Therefore, the punishment imposed by the management cannot but be reduced as atleast two out of the six charges are held unfounded. The four charges proved pertain to slackness and lethargy, though the management imputed the guilty animus to the workman by saying that the workman indulged in those acts of misconduct deliberately and wantonly. These aspects were not established. In other words, the charges that were established were so established sans the proof of the guilty mind. The two remaining charges are more associated with*

guilty mind than the first four charges. These two charges (4 & 5) involve vandalism or sabotage. So the material for supporting the punishment lost most of its efficacy."

The labour Court further held that it is in fitness of things as also in the interest of justice that the punishment imposed should be toned down; accordingly, set aside the punishment of dismissal from service by demoting the workman to S-5 Grade and directed the Management to reinstate him as Pay Loader-Operator in S-5 grade without back wages. Aggrieved by the same, the present writ petition is filed.

Sri C.R.Sridharan, learned counsel for the petitioner, strenuously contended that the Labour Court has given a go bye to the settled principles of law of the Supreme Court and assumed jurisdiction for itself of doing justice and lamented on the charges without going into the depth of it and simply stated that charge Nos.4 and 5, which are vandalism and

sabotage, were not proved and though other charges were proved, the punishment of dismissal from service was not proportionate. In fact, the Labour Court erred in holding that even though the charges were proved, the punishment of dismissal from service is disproportionate and also erred in holding that since charge Nos.4 and 5 were not proved, on the proof of other charges, the workman cannot be removed from service. What exactly the punishment required to be imposed in a given circumstances is for the Management and not for the Labour Court to interfere and pass such order in spite of finding that the other charges are proved. The charges are grave in nature and the respondent-workman is trying to sabotage and vandalize the organization. But for some alert people around him, the whole organization could have been put to heavy loss. He further contends that the findings of the labour Court are not only contrary to the findings recorded by the

Enquiry Officer but also perverse. Therefore, the award passed by the Labour Court is liable to be set aside.

Whereas, the learned counsel for the respondent-workman supported the award passed by the Labour Court and stated that the charges framed against the workman, in sum and substance, some negligence on his part while on duty. The Management has magnified the charges out of proportion. The Labour Court, on the basis of evidence, rightly came to the conclusion that charge Nos. 4 and 5 were framed without any basis. Further, even assuming that the other charges were proved, the sum and substance of which is nothing but some negligence on the part of the respondent-workman. As such, the labour Court came to the conclusion that the punishment of dismissal is disproportionate to that of misconduct proved and the workman deserves to be demoted to S-5 Grade and entitled to be reinstated as such without any

back wages. The Labour Court, while taking into consideration the facts and circumstances of the case, has imposed the said punishment. Therefore, it cannot be said that the Labour Court has committed any legal infirmity calling for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned award and other material made available on record.

The learned counsel for the petitioner has taken the Court through the first charge sheet as well as the second charge sheet. In all, eight charges were framed against the respondent-workman. The labour Court, on the basis of evidence came to the conclusion that the charge Nos. 4 and 5, though seems to be very serious in nature, were not proved and the only misconduct proved against the

workman is recklessness on his part while on duty. May be, what the learned counsel for the petitioner says is true that in the very nature of the duties required to be attended to by the respondent-workman, any negligence would have met with ghastly accident and consequences, since he was dealing with regulating of sulphuric acid on the plant and it may also be true that if some persons around him would not take care of the situation, ghastly accident, as such, would have taken place. May be, the respondent workman was negligent and reckless in his duties. But in view of the fact that charge Nos.4 and 5 were not proved, the labour Court rightly came to the conclusion that the punishment of dismissal from service is disproportionate to that of the misconduct and therefore, instead of reinstating the respondent in Grade S-6 directed the management to demote him to S-5 grade and reinstate him without any back wages or attendant benefits.

Now, it is brought to the notice of this Court that the respondent-workman also filed a writ petition in WP No.135919 of 1998. The management in this writ petition has obtained stay of operation of the award and the respondent was paid wages as required under Section 17-B of the Act and during pendency of the writ petition, he has already attained the age of superannuation. Therefore, the question of reinstating the workman into service does not arise. Thus, the danger apprehended by the petitioner-management with regard to the recklessness and negligent behavior of the workman if he is reinstated into service is no more available. However, in the facts and circumstances of the case, I deem it appropriate to modify the award passed by the labour Court as under.

"The respondent-workman shall be treated as retired compulsorily in S-6 grade as on the date of his dismissal from service

instead of dismissal. However, it is made clear that the petitioner-Management shall not recover 17-B wages paid to him during pendency of the writ petition. The petitioner-Management shall calculate all the benefits accrued therefor treating the respondent-workman as having been retired from service compulsorily and pay the same to the respondent."

Writ petition is disposed of accordingly. No costs.

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27-06-2007

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